



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Cedar City Field Office
176 East DL Sargent Drive
Cedar City, Utah 84720

S/21/013
RECEIVED

JUL 12 2001

DIVISION OF
OIL, GAS AND MINING

In Reply Refer To:
UT-040
3809: UTU-67787



0002

July 10, 2001

Certified Mail No.: 7000 0520 0016 9809 4423
Return Receipt Requested

DECISION

Mr. Bruce Whited	:	43 CFR 3715
12153 South 1840 East	:	Notice of Noncompliance,
Draper, UT 84020	:	Failure to Obtain Authorization to Store Equipment

This decision is a notice of noncompliance for your mining operations on public lands located in Beaver County, Utah. The mining disturbance is located in California Hollow within the N $\frac{1}{2}$ N $\frac{1}{2}$ of section 1, T. 31 S., R. 8 W. The disturbance, referred to as the L.C. & K.C.L. Mine Site, is located entirely on Federal lands within this office's jurisdiction. The original notice of intent filed for this operation was through Cobb Mining Operation, care of yourself, and submitted to this office on May 28, 1991. On March 11, 1992, an amended notice was filed by AEMC (again, care of yourself), which moved all milling activity proposed under the original notice from federal to private lands. The mine site disturbance covered under this amended notice was assigned to BLM case file UTU-67787, and State of Utah, Division of Oil, Gas, and Mining (DOGM) Small Mining Operation case file S/021/013. Our records and the DOGM records indicate that you are the current operator and responsible party for the mine site.

On September 29, 1997, this office sent a letter informing you that the site has been inactive for over a year and the mine site was covered with noxious weeds. No annual reports have been filed for the mining operation or associated mill site since 1993. The BLM acceptance letter for the amended notice, for which you are the responsible party, requires that if mining activities extend for more than one year, that a new notice be filed with this office, or that the reclamation plan for the site be carried out.

The 1997 letter led to multiple telephone conversations between Ed Ginouves of my staff and yourself. Through those conversations it was agreed upon that the site would be reclaimed as specified in the reclamation plan provided in the amended notice of intent. More than two years passed with no significant on-the-ground progress made towards reclamation of the mine site. A notice of noncompliance was sent to you on April 5, 2000. The notice of noncompliance cited failure to perform timely reclamation under 43 CFR 3809.3-2(b). To correct the noncompliance, you were directed to commence earthwork reclamation no later than 30 days from receipt of the letter, and complete earthwork reclamation no later than 90 days from receipt of the letter. Seeding of the reclaimed site was to be performed during the period of September 30-October 30, 2000. The notice of noncompliance was sent via certified mail and received by yourself on April 12, 2000. The 90 day period expired on July 11, 2000. An inspection of the mine site was performed on July 11, 2000. That inspection revealed that the necessary earthwork reclamation had not been performed.

0002

A decision letter, dated February 6, 2001, was sent to you via certified mail (copy enclosed) notifying you that the duration of the record of noncompliance would be 1 year from the date reclamation work was satisfactorily completed or from the date that a \$5,000 reclamation bond was posted. It also stated that you will have to file a plan of operations and a 100% reclamation bond with BLM for all mining activity in excess of casual use conducted on BLM-administered lands nation-wide. While that decision letter was returned to this office unclaimed on April 20th, 2001, Mr. Ginouves made you aware of the contents of that letter via telephone conversation on February 12, 2001. In that conversation you indicated that you wanted to resolve the noncompliance, and requested that Mr. Ginouves contact you as soon as the site was accessible, so that work could resume. Mr. Ginouves telephoned your office on April 23, 2001, and left a message that the site was accessible.

On July 6, 2001, Mr. Ginouves visited the site and found the conditions unchanged from the prior inspection on July 11, 2000. I can only conclude from the lack of reclamation activity, together with your unwillingness to post the \$5,000 bond in lieu of reclamation, that you are not sincere in your desire to satisfactorily reclaim the site and resolve this noncompliance.

Since the equipment currently on site is not being used for reclamation, and is not authorized to be stored there, I have decided that it will necessary for you, no later than 30 days from the receipt of this letter, to obtain authorization to store the equipment on site through the 43 CFR 3715 regulations, or I will have the equipment impounded. On July 6, 2001, I had the remaining equipment on site posted with a **Notice to Remove Unauthorized Improvements and/or Personal Property** (copy enclosed). The notice directs the equipment owners to remove the remaining equipment from the site by August 20, 2001, or it will be impounded by the BLM. The owners will have 90 days to claim the equipment or it will be disposed of, with any proceeds being used to pay for costs related to the equipment impoundment and/or site reclamation efforts.

You have the right to appeal to the Utah State Director, Bureau of Land Management, in accordance with 43 CFR 3809.4. If you exercise this right, your appeal accompanied by a statement of reasons and any arguments you wish to present, which would justify reversal or modification of the decision, must be filed in writing at this office within 30 days after the date of this decision. This decision will remain in effect during appeal unless a written request for a stay is granted.

Any questions regarding this decision should be directed to Ed Ginouves, at this office, telephone 435-865-3040.

Rita Wilkins (acting)

for Jerry Meredith
Field Office Manager

xc. Joelle Burns, DOGM
Terry Snyder, BLM, USO

Enclosures:

1. Copy of Decision Letter, dated February 6, 2001
2. Copy of Notice to Remove Unauthorized Improvements and/or Personal Property, dated July 6, 2001



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Cedar City Field Office
176 East DL Sargent Drive
Cedar City, Utah 84720

In Reply Refer To:
UT-040
3809: UTU-67787

February 6, 2001

Certified Mail No. 7000 0520 0016 9809 4393
Return Receipt Requested

DECISION

Mr. Bruce Whited
12153 South 1840 East
Draper, UT 84020

:
:
:

43 CFR 3809
Establishment of a Record of
Noncompliance

This decision is a record of noncompliance for your mining operations on public lands located in Beaver County, Utah. The mining disturbance is located in California Hollow within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 1, T. 31 S., R. 8 W. The disturbance, referred to as the L.C. & K.C.L. Mine Site, is located entirely on Federal lands with this office's jurisdiction. The original notice of intent filed for this operation was through Cobb Mining Operation, care of yourself, and submitted to this office on May 28, 1991. On March 11, 1992, an amended notice (copy enclosed) was filed by AEMC (again, care of yourself), which moved all milling activity proposed under the original notice from federal to private lands. The mine site disturbance covered under this amended notice was assigned to BLM case file UTU-67787, and State of Utah, Division of Oil, Gas, and Mining (DOGM) Small Mining Operation case file S/021/013. Our records and the DOGM records indicate that you are the current operator and responsible party for the mine site.

On September 29, 1997, this office sent a letter informing you that the site has been inactive for over a year and the mine site was covered with noxious weeds. No annual reports have been filed for the mining operation or associated mill site since 1993. The BLM acceptance letter for the amended notice (copy enclosed), for which you are the responsible party, requires that if mining activities extend for more than one year, that a new notice be filed with this office, or that the reclamation plan for the site be carried out.

The 1997 letter led to multiple telephone conversations between Ed Ginouves of my staff and yourself. Through those conversations it was agreed upon that the site would be reclaimed as specified in the reclamation plan provided in the amended notice of intent. More than two years passed with no significant on-the-ground progress made towards reclamation of the mine site. A notice of noncompliance was sent to you on April 5, 2000. The notice of noncompliance cited failure to perform timely reclamation under 43 CFR 3809.3-2(b). To correct the noncompliance, you were directed to commence earthwork reclamation no later than 30 days from receipt of the letter, and complete earthwork reclamation no later than 90 days from receipt of the letter. Seeding of the reclaimed site was

File Copy

to be performed during the period of September 30th - October 30th, 2000. The notice of noncompliance was sent via certified mail and received by yourself on April 12, 2000. The 90 day period expired on July 11, 2000. An inspection of the mine site was performed on July 11, 2000. That inspection revealed that the necessary earthwork reclamation had not been performed. Accordingly, you have established a record of noncompliance as of July 11, 2000.

A record of noncompliance means that you will have to file a plan of operations and a 100% reclamation bond with BLM for all mining activity in excess of casual use conducted on BLM-administered lands Nationwide. You have the right to appeal the establishment of the record of noncompliance and bond amount to the Utah State Director, Bureau of Land Management, in accordance with 43 CFR 3809.4. If you exercise this right, your appeal, accompanied by a statement of reasons and any arguments you wish to present which would justify reversal or modification of the decision, must be filed in writing at this office within 30 days after the date of this decision. This decision will remain in effect during appeal unless a written request for a stay is granted.

I have recommended to the State Director that the duration of your record of noncompliance be 1 year. The duration will not begin until all outstanding reclamation work required in the notice of noncompliance, dated April 5, 2000, has been satisfactorily completed, or a bond posted for the remaining reclamation amount. The bond amount required for your unreclaimed operation is \$5,000.

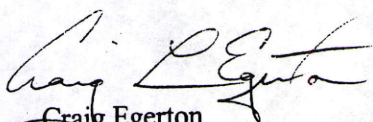
The decision regarding the duration of the record of noncompliance may be appealed to the Interior Board of land Appeals, Office of the Secretary, in accordance with the regulations contained in the 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from the receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (request) for a stay (suspension) of the effectiveness of this decision during the time your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to the Interior Board of land Appeals, and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that the stay should be granted.

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

Any questions regarding this decision should be directed to Ed Ginouves, at this office, telephone 435-865-3040.


Craig Egerton
Field Office Manager

Attachment: Form 1842-1

bcc: Mr. Tom Munson, DOGM
Utah State Office, UT-921, Attn. Terry Snyder

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. NOTICE OF APPEAL Within 30 days file a *Notice of Appeal* in the office which issued this decision (see 43 CFR Secs. 4.411 and 4.413). You may state your reasons for appealing, if you desire.
2. WHERE TO FILE
NOTICE OF APPEAL Field Office Manager
Bureau of Land Management
Cedar City Field Office
176 E. D.L. Sargent Dr.
Cedar City, UT 84720-9337

SOLICITOR
ALSO COPY TO Regional Solicitor
Office of the Field Solicitor
Federal Building, Room 6201
125 South State Street
Salt Lake City, UT 84145-0155
3. STATEMENT OF REASONS . . Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of the Secretary, Board of Land Appeals, 4015 Wilson Blvd., Arlington, Virginia 22203 (see 43 CFR Sec. 4.412 and 4.413). If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary.

SOLICITOR
ALSO COPY TO Regional Solicitor
Office of the Field Solicitor
Federal Building, Room 6201
125 South State Street
Salt Lake City, UT 84138-1180
4. ADVERSE PARTIES Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the *Statement of Reasons*, and (c) any other documents filed (see 43 CFR Sec. 4.413). Service will be made upon the Associate Solicitor, Division of Energy and Resources, Washington, D.C. 20240, instead of the Field or Regional Solicitor when appeals are taken from decisions of the Director (WO-100).
5. PROOF OF SERVICE Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of the Secretary, Board of Land Appeals, 4015 Wilson Blvd., Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (see 43 CFR Sec. 4.401(c)(2)).

Unless these procedures are followed your appeal will be subject to dismissal (see 43 CFR Sec. 4.402). Be certain that all communications are identified by serial number of the case being appealed.

NOTE: A document is not filed until it is actually received in the proper office (see 43 CFR Sec. 4.401(a))



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Cedar City Field Office
176 East DL Sargent Drive
Cedar City, Utah 84720

NOTICE TO REMOVE UNAUTHORIZED IMPROVEMENTS AND/OR PERSONAL PROPERTY

TO: Any and all other persons claiming any right of ownership or interest in the hereinafter improvements and/or property described below:

Whereas, the hereinafter described lands are public lands of the United States of America under the primary jurisdiction and control of the Bureau of Land Management, United States Department of the Interior:

NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 1, T. 31 S., R. 8 W., Beaver County, Utah

Whereas, said Bureau under its responsibility of supervising and managing the public lands under its jurisdiction and control has the duty to eliminate and prevent trespasses of all types upon said lands, and

Whereas, there have been located heretofore and now exist upon said lands certain improvements and personal property described in part as follows:

All items of personal property located within above described lands.

Whereas, the continued existence of said improvements and personal property constitutes a trespass and interferes with the proper and legal management of said lands;

NOW, THEREFORE, YOU AND EACH AND ALL OF YOU will please take further notice that all said improvements and personal property are hereby required to be removed from said lands on or prior to August 20th, 2001, and in the absence of such removal by such time, the United States, in order to prevent further trespass, will without further or additional notices, and without liability, remove and/or destroy said improvements and personal property.

The United States will take care to protect and preserve personal property of value that may be found on the premises after the removal date given in this notice, and will store said property. This property can be claimed within 90 days of removal, upon payment of storage, and administrative expenses. Failure to claim said property within the specified time frame will constitute forfeiture, and the same will be disposed of by the United States.

Dated: 7-6-01

A. J. Meredith

Cedar City Field Office Manager